Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02795/2017
PA/09564/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 November 2019	**On 04 February 2020**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

B A and E A (TURKEY)
[ANONYMITY ORDER MADE]

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellants: Mr Raza Halim, Counsel instructed by Ahmed Rahman Carr, solicitors
For the respondent: Ms Julie Isherwood, a Senior Home Office Presenting Officer

Anonymity order

The First-tier Tribunal made an anonymity order. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellants, whether directly or indirectly. This order applies, amongst others, to all parties.

Any failure to comply with this order could give rise to contempt of court proceedings.

DECISION AND REASONS

1. The appellants appeal with permission against the decision of the First-tier Tribunal dismissing their appeal against the respondent's decision to refuse them international protection under the Refugee Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. The first appellant has her husband and son as her dependant; the second appellant is her adult daughter.

2. The appellants are Turkish citizens, who are ethnic Kurds and Alevi Muslims by religion. The husband came to the United Kingdom first, in December 2008, as a Turkish ECAA business man. For clarity, unless the context otherwise requires, in this decision I refer to the first appellant as 'the principal appellant', the second appellant (her adult daughter) as 'the daughter' and the principal appellant's husband as 'the husband'.

Immigration history

3. The husband arrived in the United Kingdom in December 2008 and was present lawfully until 5 June 2010 pursuant to the Turkish ECAA and the Immigration Rules HC 510. He had leave as a Turkish business person.

4. The principal appellant and the two children joined the husband in 2009 and received leave in line with him, expiring also on 5 June 2010. None of these parties has been lawfully in the United Kingdom since that date.

5. The respondent refused further ECAA leave, pursuant to paragraph 4 of HC 510, because she was not satisfied that the husband was a partner in the business, or that it had an alcohol licence as claimed. The husband appealed to the First-tier Tribunal, which dismissed the appeal for want of jurisdiction. The Judge noted that the appellant and his dependants had been badly advised by his previous representatives and that OISC had upheld a complaint against them. That First-tier Tribunal decision was not challenged: instead, the husband sought judicial review of the respondent's refusal, out of time, but time was not extended and the judicial review application was not admitted.

6. Following the failure of his ECAA application, the husband made an asylum claim. That claim was struck out on 22 September 2016 and the husband thereafter became a dependant in the principal appellant's asylum claim, along with the couple's son, who is still a minor. By this time, the daughter was an adult and made her own asylum claim.

Basis of asylum claim

7. On 9 February 2016, the appellant and the daughter each claimed asylum. The respondent refused both claims in August 2016. Both claims are before me, and both were made almost 7 years after the parties entered the United Kingdom. The husband had been here for a year before that, so for him it was a delay of 8 years.

8. In her asylum application the principal appellant claimed to have been accused in 1994 of being involved with the PKK, and to have been detained twice, first in June 2005 for two days, at Sultan Beylin, following the opening ceremony for HADEP, which was on the same day as what she described as the 'Semdinli incident', and again at the beginning of 2008, when she attended the anniversary of the death of Hrant Dink, in Taksim Istanbul, and was detained for three days. On both occasions she was accused of PKK involvement and ill-treated. The daughter also claimed to have been detained, twice in 1994 and in 1995, because her name was similar to that of a cousin who was involved with a political organisation. Neither the appellant nor the daughter had ever been formally arrested or charged. Both feared return to Turkey as they feared that they would be identified again with the PKK, detained and ill-treated. Following an asylum interview, the respondent refused both claims.

9. The respondent accepted that the appellants were both Alevi Muslims and Kurds, but not that they, or the husband, were followers of HDP, DTP or BDP (pro-Kurdish political parties). The respondent did not consider that the appellants had established a real risk or reasonable degree of likelihood of persecution or serious harm to her on return to Turkey.

10. The appellants appealed to the First-tier Tribunal.

Procedural history

11. In June 2017, First-tier Judge Chana heard the appeals and dismissed them in a decision sent to the parties in October 2017. In March 2018, Upper Tribunal Judge Smith set aside that decision and remitted the appeals to the First-tier Tribunal for hearing afresh. First-tier Judge Courtney heard the appeals again on 1 March 2019 and dismissed them again.

12. Judge Courtney's decision records the oral evidence given by the first appellant in Turkish, and the second appellant in English. I will return to the evidence given to the First-tier Tribunal when I summarise the evidence before me in these appeals. The appellants appealed to the Upper Tribunal.

13. By a decision dated 24 July 2019, I set aside the decision of First-tier Judge Courtney and gave directions for the future conduct of this appeal, including provision for a joint bundle of evidence (limited to a total of 100 pages for each party) and for the filing of skeleton arguments by each party. No interpreter was requested as the appellants did not intend to file further witness statements nor did the respondent intend to cross-examine them.

14. That is the basis on which these appeals come before me again for remaking in the Upper Tribunal.

Upper Tribunal hearing

15. The first and second appellants provided witness statements and gave evidence to the First-tier Tribunal. The agreed bundle does not contain the witness statements: I conclude that the appellants are content with the summary of their evidence given in

the decision of Judge Courtney. The appellants' evidence, as there set out, I treat as their evidence to the Upper Tribunal.

Appellants' evidence

16. The principal appellant was born in July 1971 in Kahramanmaraş Province, Turkey. Her last residence in Turkey was in Istanbul, in the Sultan Beyli District.

17. After she moved from Kahramanmaraş Province to Istanbul, the principal appellant became involved with pro-Kurdish political organisations: first HEP, then DEP, and from 1994, HADEP. She would have been 23 years old then. She distributed leaflets and magazines for them, at least for two or three years. The principal appellant said in her oral evidence that she had difficulty giving coherent evidence: she became forgetful when she was asked a question and was unable to give a chronologically accurate account of her involvement with the various Kurdish organisations with which she worked in Turkey over the years. When HADEP was closed down by the Turkish authorities in March 2003, the principal appellant joined DEHAP, and when it dissolved, the DTP. In 2009, when the DTP was banned, she worked with the BDP and in April 2014, BDP and HDP merged.

18. On any view, the appellant has shown commitment to the political wing of the pro-Kurdish cause. It has always been her case that she had no connection with the banned PKK, the militant wing of the pro-Kurdish cause, but that the authorities thought that she did have such a connection.

19. In June 2005, when she was 34 years old, the principal appellant was arrested dyrung a party celebrating the formation of the DTP, and detained in Sultan Beyli police station. The arrest was triggered when a bookstore in Şemdinli was bombed: people at the party heard the news and begun shouting pro-Kurdish slogans. Police broke up the event and the principal appellant, among others, was taken to police headquarters, fingerprinted, photographed, and questioned about her presumed links with the PKK. During this detention, the appellant was beaten with sticks and truncheons, kicked, punched, and subjected to *falaka* (beating on the soles of the feet). She received a head wound, but it was not treated. The principal appellant denied all the allegations and was eventually released without charge.

20. The principal appellant continued working first with the DTP, and later with the BDP. On January 19 2007, Mr Hrant Dink, the editor in chief of the bilingual Turkish-Armenian newspaper, *Agos,* was assassinated. Before he was killed, Mr Dink had been prosecuted three times for denigrating Turkishness and received numerous death threats from Turkish nationals. In January 2008, the appellant attended a gathering in Taksim, Istanbul, with others protesting the assassination of Mr Dink. The police used tear gas and water cannon on the protesters. The appellant was arrested and taken again to police headquarters, fingerprinted and photographed. She was beaten and tortured, including being stripped naked, blindfolded, raped and burned with red hot metal and with cigarettes. The appellant continued to deny any connection with the PKK. On the third day, the police interrogating the principal appellant told her that

they would stop if she agreed to become an informer. They then grabbed her by the hair, and forced her head into a toilet bowl.

21. The principal appellant could take no more. She agreed to become an informer and was released, with monthly reporting conditions, after signing a document she was not permitted to read. The principal appellant reported as directed, giving general information about the BDP as to meetings and rallies. The Turkish police pressed her to name people in the political organisation, the DTP, who were intending to join the militant organisation, the PKK, but the appellant refused. After a few months, the police told her she need report only every two to three months.

22. In June 2008, the principal appellant applied for and received a new Turkish identity card. She had no difficulty getting that document. The principal appellant's friends and family were becoming suspicious of her, so she decided to take her two children and leave Turkey to come to the United Kingdom and join her husband. On 6 August 2009, the principal appellant and her two children left Turkey: her daughter, born in 1997, was only 12 years old, and her son was only 3 years old. The appellant used her own passport to leave Turkey and encountered no difficulties.

23. Since coming to the United Kingdom, the principal appellant has continued to attend protests organised by the Kurdish Community Centre and the Kurdish People's Democratic Assembly. The appellant told Dr Smith that she was in contact with her brothers in Turkey, who were living in Istanbul and 'getting by'.

24. The daughter said in her asylum interview that she had never been to any demonstrations in Turkey, and her evidence as to what her parents did, and what happened to her mother, was vague. When she was 17, in 2014, she joined HDP in the United Kingdom.

Medical Foundation report

25. Dr Allison Smith MBChB MRCGP of the Medical Foundation (Freedom from Torture) examined the principal appellant in on 29 November 2016, 6 December 2016 and 13 December 2016 over a total period of 6 hours. Dr Smith's report dated 21 March 2017 deals both with the principal appellant's psychiatric difficulties and her physical health and appearance, including scarring. The principal appellant told Dr Smith that she did not want her son or daughter to be aware of what had happened to her in Turkey, and reserved her discussion of that for her weekly counselling sessions.

26. Her report recorded 12 body scars, which she considered with reference to the Istanbul Protocol. There was a linear scar on the top of the principal appellant's head, a circular scar on her right forearm, a large rectangular scar on her left forearm, three short linear scars on her left forearm and a linear scar, about 11 cm long, with a 'train track appearance' running from the top of the right thigh to the abdomen. The first two scars were considered *highly consistent* with the appellant's account of being hit on the head with a rifle butt and burned with a cigarette; the rectangular scar and the long linear scar were *diagnostic* of burning with a red hot piece of metal, that is to say, that they could not have been caused any other way; the three short linear scars on her legs were *consistent with* being beaten. Evidence of soreness around the labia minor was not

considered to be suggestive of rape, but Dr Smith said that 'it would be surprising to find any [rape-related] abnormality on examination'.

27. Dr Smith's professional opinion as to the principal appellant's mental health was that she had post-traumatic stress disorder. The principal appellant had already begun having counselling: she had poor memory and poor concentration, and presented as mostly sad and distressed, except when she spoke about her children. She was sad that she and her husband could not provide for them the sort of life that they would have liked. The appellant had no thoughts of self-harm or suicide; her feeling for and love of her children was a protective factor. Her general medical practitioner had prescribed Mirtazapine 30 mg nightly, a sedating anti-depressant which had improved the appellant's sleep pattern. Dr Smith considered that the dose might need to be increased.

28. Dr Smith summarised her conclusions at [81]-[85] of the report, finding that 8 of the appellant's 12 body lesions supported the principal appellant's account of being raped and ill treated in 2005 and 2007 as alleged, three being highly consistent and two diagnostic of the attributions provided. In her opinion, the principal appellant had signs and symptoms diagnostic both of post-traumatic stress disorder and depression, with reference to ICD-10 paragraphs F43.1 and F32 respectively.

29. Dr Smith considered whether the principal appellant was likely to be falsifying her symptoms, with reference to the Istanbul Protocol at sub-paragraph 105(f), but concluded that the appellant's history, examination and timeline were 'clinically congruent with no evidence of embellishment or exaggeration'. Dr Smith was satisfied that the appellant's account was genuine and her signs and symptoms supportive of her account.

Dr Derya Bahir

30. Dr Derya Bahir is a post-doctoral researcher at Queen Mary College, University of London, having completed her undergraduate degree at Istanbul University and her Masters Degree on human rights and democratisation at the University of Nottingham. She is a qualified lawyer affiliated to the Istanbul Bar Association, and works as a consultant for a law firm in Istanbul. Dr Bahir's report, which is carefully sourced to relevant research and international documents, summarised the appellant's account, and recent political history in Turkey.

31. At [46] and following, the report deals with the position of Alevi Muslims in Turkey. Dr Bayir notes that Alevis are considered heretics under mainstream Islamic theology and have suffered "oppression, massacres, pogroms, lynching, psychical attacks, forced conversion, discrimination, harassment, insults, exclusion, prejudice, hate speech' and other crimes throughout Turkish history, at the institutional and social level. In modern Turkey, the government has a programme of Sunnification and Alevis are subject to an 'existential threat'". They continue to experience social stigma, discrimination and violence.

32. The AKP Islamist Turkish government had reformed the former secular education system in Turkey. Religious education courses were compulsory and exemption

subject to administrative difficulty in practice, with children who are allowed to opt out facing increased harassment and ill-treatment. At [48] the report dealt with the Islamisation of the formerly rigidly secular Turkish education system:

> "48. [The AKP Government's social engineering and Sunnification programmes] are felt most of all in the area of education. Under the Islamism AKP government vision of bringing up a 'pious generation', the old secular education system has gone through a serious transformation. Many schools have been converted into religious schools (*İmam Hatip Okullari)* where girls and boys are segregated and mainly taught Sunni Islamic religion and its practices. More courses based on Islamic education have been inserted into the school curriculum; the government permits the Islamic headscarf at schools; it has opened mosques in schools; and only Islamic religious symbols and practices are allowed at schools. Under the auspices of the Ministry of Internal Affairs, many Islamic religious cult organisations are allowed into schools to conduct extra-curricular activities such as teaching the Qur'an during the summer holidays and taking children to Friday prayer. Recently, the Ministry of National Education signed a protocol with the Islamism Hizmet Foundation, an Islamic religious cult organisation, to provide 'moral values' classes in all public schools during school hours."

33. Dr Bahir considered that if the daughter and the son returned to Turkey, as Alevis they were very likely to be adversely affected at school and University, and might be subjected to discriminatory practices and treatment. At [51]-[52], the report explained that Islamic clergy (imams) have been appointed to University dormitories across the country to provide 'moral guidance' to University students, under the direction of the Diyanet (the Directorate of Religious Affairs).

34. Many Alevi and secular families had emigrated to European countries, concerned about the state of education in Turkey. The report also identified a climate of impunity for hate speech and hate crimes against Alevis, and that their places of worship were not officially recognised by the Turkish state. Dr Bahir considered that the daughter and the son would find it difficult to adapt to social considerations with such complex sensitivities, having grown up in the relaxed political atmosphere of the United Kingdom where they were used to speaking openly in Kurdish, and expressing Kurdish identity, culture and political opinions.

35. There would also be difficulties with employment: academic studies indicated that those with Kurdish names were less likely to be called for an interview and less likely to be in employment. Once employed, they might not pass the probationary period, and might be harassed at work and subjected to various kinds of discriminatory treatment. There was evidence of ethnicity related discrimination against Kurds, especially female Kurds, in the labour market in Turkey.

36. The principal appellant was likely to be adversely affected because of her ethno-religious identity and previous arrests for involvement with pro-Kurdish parties and organisations. Even being a relative of an HDP member or activist could prevent individuals being employed in the public sector, even if they had no such connections themselves.

Ms Sally-Ann Deacon's report

37. The appellants commissioned a report dated 29 February 2019 from Ms Sally-Ann Deacon ISW, BA Hons CQSW, an Independent Social Worker. Ms Deacon was tasked with providing a section 55 best interests report on the son, who was still a minor, concerning the impact on him of removal to Turkey. The son was then 13 years old and had lived in the United Kingdom since he came here with the principal appellant and his sister in 2009, when he was 3 years old. He had not travelled outside the United Kingdom since then and had not returned to Turkey.

38. Ms Deacon interviewed the appellant, the husband, the daughter, and the son, and also Mrs Williams, the Head of Year 8 at Edmonton County School, where the son is studying. She had access to Dr Smith's medico-legal report, and to achievement certificates, an attendance letter from November 2016 and school progress reports for the son for 2012, 2013, 2014, 2015 and 2016.

39. Ms Deacon described the son as 'delightful, articulate and courteous' and happy to engage in discussions. She acknowledged that he had been raised by Turkish nationals and was likely to share some common cultural characteristics with his Kurdish Alevi Muslim parents, but that he had also been exposed to significant United Kingdom influences. His parents had not restricted his experience of the external environment in the United Kingdom. Both he and his elder sister, the second appellant, told Ms Deacon that they had been raised to think independently and would find it very difficult to adapt to the more restrictive approach in Turkey.

40. The children, and particularly the son whose circumstances Ms Deacon was required to consider, felt themselves to be British and would miss their friends at school and University, and in the community. The son was 'very close' to his aunts, uncles and cousins in the United Kingdom. He did not know his family in Turkey and would not recognise them if he met them again. Ms Deacon did not agree with the Home Office assessment that modern means of communication were sufficient to maintain these relationships. Ms Deacon thought it unlikely that their parents' presence, after the family had relocated to Turkey, would suffice fully to compensate for the loss of those friendships.

41. Ms Deacon confirmed from her discussions with the children that the appellant had been able to keep the detail of her rape and abuse in detention from them, due to her wish to protect them, but they had realised that she was emotionally fragile and vulnerable.

42. The son was about to begin his GCSE studies and select his subjects. GCSE work would begin in September 2019 and he was considered to be an excellent student who would do well: his teacher thought that for him to move school and country would be 'catastrophic for his education'. The son wanted to work hard and study philosophy and English at Cambridge University.

43. Ms Deacon considered that the Tribunal should prefer the expert medical evidence concerning the principal appellant's past experiences in Turkey to the respondent's rejection of that account. With respect, that is not her area of expertise. Ms Deacon

said she had been 'led to believe' various things about the Turkish educational system, and that the son's first language was now English, which meant that he would need to attend a fee paying school as Turkish schools taught only in Turkish, in which the son could neither read nor write, though he could speak it to some extent. The observations about the Turkish educational system are not sourced. The report goes on to make highly speculative observations about the likelihood of the husband getting a job in Turkey, or the principal appellant being able to work, given her ill health.

44. Ms Deacon concluded that the son's best interests would not be protected or promoted should he return to Turkey and that it would be unduly harsh or disproportionate to expect him to go there.

Respondent's CPINs on Turkey

45. The appellants rely on the September 2018 CPIN on Kurds in Turkey. At [4], the CPIN sets out the complex history of the pro-Kurdish political parties. At [7] it deals with the perceived association between the pro-Kurdish political parties and the terrorist organisation, the PKK. In particular, at 7.1.4, the CPIN records that Freedom House stated in 2018 that

> 'After a ceasefire with the militant Kurdistan Workers Party (PKK) collapsed in 2015, the government accused the HDP of being a proxy for the group.'

and at 7.1.5, that Human Rights Watch in its 2018 World Report, covering events in 2017, stated that

> "In parallel with the resumption of armed clashes between the military and the armed Kurdistan Workers' Party (PKK) interest he southeast, the government pursued a crackdown on elected parliamentarians and municipalities from pro-Kurdish parties."

46. The rest of the CPIN emphasised the increased political crackdown in Turkey since the coup attempt in July 2016, with almost half of the 59 HDP members of parliament being detained or arrested at least once. Al Jazeera had reported in February 2017 that in an application to the European Court of Human Rights, HDP stated that since the failed coup attempt, 5471 people had been taken into custody and 1482 arrested within the scope of operations targeting the HDP and its supporters. In March 2017, Human Rights Watch reached a similar conclusion.

47. At [10.8] the report confirmed that there was a risk of torture in police custody, including allegations by HDP that police tortured dozens of civilians in Hakkari Province in August 2017. An investigation had been opened, but had not reported. At [10.9] the CPIN speaks of impunity for perpetrators, following an emergency decree in December 2017. Amnesty International, the US State Department, and the Turkish human rights association İnsan Haklari Dernegi all recorded impunity as an issue and opposition from the Turkish authorities to any publication of data on its investigations into torture.

48. On 7 August 2019, the respondent received a Response to an Information Request entitled *Turkey: social security, benefits and healthcare.* That document does not add very much to the CPIN.

Upper Tribunal hearing

49. For the respondent, Ms Isherwood relied on her skeleton argument settled by Ms Alice Holmes, on 14 November 2019, just before the hearing. Ms Holmes' skeleton argument asserted that the appellants' credibility was in issue, but since the respondent has opted not to cross-examine either of them, that is a difficult position to sustain and I spend no further time on the negative credibility arguments.

50. As regards *sur place* activity, Ms Holmes argued that little weight should be placed on photographs of the principal appellant attending pro-Kurdish demonstrations, all of which post-date the asylum claim, or on her membership card for the Kurdish People's Democratic Assembly in the United Kingdom, which records her as a service user and member since 2010.

51. With regard to Dr Smith's medico-legal report, the skeleton argument contended that the scarring and trauma affecting the appellant might not have been inflicted as described, despite the findings of Dr Smith that they were consistent with her account. The family would be returned as a unit, and have family members who could help them to resettle in Turkey. The mental health issues relating to the principal appellant were not sufficient to reach the Article 3 ECHR standard.

52. At [15] in her skeleton argument, Ms Holmes contended that:

> "15. Even if it is taken at its highest, it is submitted that the appellants cannot succeed in their asylum claim. At its highest, the claim is that they would be at risk on return because the Turkish authorities are aware that they are involved with Kurdish political parties and that in 2008, the first appellant was ill treated by the authorities and forced to become an informer. However, it is submitted that that assumption doesn't take into account the length of time between that interest and the present. Also, even if it were accepted that, as Deriya Bayir's report claims at [18], the Turkish authorities have a network of spies in the UK, then they might well be aware that neither appellant is a member of the HDP or any other political party, and that their activities are those of no more than low level supporters, who have also claimed asylum and will wish to bolster that claim. As such, they are unlikely to be of any interest to the authorities who may well consider that they have more pressing concerns to attend to."

53. As regards Article 8 ECHR private and family life, the skeleton argument contended that there were no 'very significant obstacles' engaging paragraph 276ADE of the Rules and that, in relation to the best interests of the couple's minor son, little weight could be placed on Ms Deacon's Independent Social Worker report. All the family members would be removed together. The daughter and the son would necessarily be able to speak Kurdish, as their mother had no other language (the reference in the skeleton argument to speaking Turkish is clearly erroneous as the principal appellant is a Kurdish speaker). There was nothing in section 117B of the 2002 Act to assist these appellants, who were not financially independent, and in the case of the principal

appellant, not English speaking. The skeleton argument does not address subsection 117B(6).

54. In oral argument, Ms Isherwood observed that *IK Turkey* supported the respondent's contention that the previous arrests, which had not resulted in any charge, would not now come up on the Turkish computer system. The principal appellant was not 'wanted' and there was no risk on return on that basis. Ms Isherwood referred me to footnote 117 in the expert report of Dr Smith regarding the situation in Germany and France. There were jobs and education for Kurds in Turkey, although they remained excluded from civil service and public posts. There was a mandatory religious aspect to the state education in Turkey.

55. For the appellants, Mr Halim relied on his skeleton argument and acknowledged that the principal appellant's *sur place* activities were post-decision. He argued that no negative inference should be drawn from that: the principal appellant had simply gathered the evidence once her solicitors advised her to do so. The respondent had not suggested that the person in the 75 photographs of pro-Kurdish demonstrations was not the principal appellant. The material in question was in the public domain and the principal appellant could be clearly seen holding banners which alleged that the Turkish state was killing Kurds, and so on. The Turkish state had deep penetration into and sophisticated surveillance within the Turkish diaspora in the United Kingdom.

56. The daughter was now an adult and studying at University. Both children had been in the United Kingdom for more than 10 years and were qualifying children within the meaning of section 117D of the Nationality, Immigration and Asylum Act 2002 (as amended).

57. The risk the appellants feared was from state actors. The principal appellant had given a credible account of past persecution and of a real future risk of ill treatment if she were to be returned to Turkey. Mr Halim relied on the report of Dr Bayir, which he described as 'focused and rigorously referenced' and which concluded that it was plausible that the appellant would be arrested by the Turkish authorities on return by reason of her attendance at and involvement with dissident political organisations, and that if she were to be arrested she was at real risk of police brutality, torture, charges and imprisonment; and that it was 'very likely that the appellant's membership of activities with the Kurdish Community Centre might also put her at further risk on her return to Turkey as the Turkish Intelligence Services (MIT) maintain close surveillance over activities of political dissidents abroad', including in the United Kingdom, as Deputy Prime Minister Bekir Bozdag had admitted openly. The surveillance by MIT included surveillance of social media posts.

58. The Turkish border police had a computerised system, POL-NET, which contained details of previous arrests, convictions, arrest warrants and court cases. If, as seemed reasonably likely, the principal appellant's name came up on that database, the principal appellant and perhaps the daughter would be transferred to the Istanbul Anti-Terror Branch, which was known to use torture. The appellants' claim should succeed on that basis.

59. Regarding Article 8 ECHR, the appellants contended that they would face very significant obstacles if removed to Turkey, by reason of the endemic, institutionalised prejudice against those of Kurdish ethnicity and those of the Alevi Muslim faith. The appellant relied on the evidence in Dr Bahir's report and on the appellant's committed activism. Mr Halim contended that this was the paradigm case for paragraph 276ADE so far as Article 8 ECHR was concerned and the appeals of both appellants and the principal appellant's dependants should be allowed.

Analysis

60. Since the respondent has opted not to cross-examine the appellants, I treat their evidence as credible, to the lower standard applicable in international protection appeals.

61. I have considered what weight I can give to the expert evidence. As regards Dr Smith's medico-legal report, and Dr Bakir's country report, both are carefully prepared, Dr Smith's report with reference to the Istanbul Protocol standard and Dr Bakir's report with proper sourcing, and an awareness of her *Ikarian Reefer* duties. I place weight on both reports. Dr Smith found that the marks on the appellant's body are corroborative of the appellant's account of being ill-treated in Turkey.

62. In contrast, I am unable to place much weight on Ms Deacon's opinion: her report lacks rigour and may well be at least in part cut and pasted from another report (there is a mysterious reference on page 10 to the son having 'relatives remaining in Pakistani'). Ms Deacon's opinion lacks much in the way of specifics and is speculative about matters not within her remit. She accepts that the son's best interests lie in remaining with his immediate family, his parents and his sister. The most that can really be drawn from this report is that the son is a happy, healthy, hardworking young person, who now feels primarily British and speaks English at school, and who has a friendship group developed in the United Kingdom while he has been here, mostly at a time when his parents had no leave to remain, though that is no fault of his and cannot count against him.

63. There is nothing exceptional in what Ms Deacon describes and if the principal appellant's appeal would otherwise fail, I am satisfied that her son's section 55 best interests are in returning to Turkey with the rest of his family. There is nothing in the son's circumstances which could reach the level of undue harshness or exceptional circumstances, if his mother's appeal failed.

64. I return, therefore, to the question of the risk to the principal appellant. Her unchallenged account in her oral evidence is fully corroborated by Dr Smith's report. She is a person who has a long-term connection with the various pro-Kurdish parties in Turkey, and has continued that association in the United Kingdom. Those parties represent the political wing of the pro-Kurdish movement in Turkey. The appellant has no connection with the PKK but has on two occasions been suspected of being so connected and has been interrogated and suffered physical harm by reason of those suspicions: persecution derives from what the actor of persecution considers a person's

allegiance to be, and the fact that it is inaccurate is of no assistance during an interrogation.

65. I remind myself that under paragraph 339K of the Immigration Rules HC 395 (as amended):

> "339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated."

I am satisfied that the established treatment of the principal appellant amounted to serious harm.

66. The question then is whether there are good reasons to consider that the persecution or serious harm will be repeated. I note that the principal appellant was not charged on either of the occasions when she was arrested, and that she was able to replace her identity card and leave Turkey openly on her own Turkish passport. If it were not for her *sur place* activity, applying the guidance given in *IK* (Returnees, Records, IFA) Turkey CG [2004] UKIAT 00312, I would not find that the principal appellant was at risk on return, still less that there was any risk by association to her daughter or her other family members.

67. There is, however, significant evidence of *sur place* activity, which the respondent does not dispute, and which represents a continuation of the principal appellant's activity in Turkey before 2009. The principal appellant cannot be expected to suppress the expression of her political convictions to escape harm: see *RT (Zimbabwe) & Ors v Secretary of State for the Home Department* [2012] UKSC 38. The second appellant, the daughter, has also joined the party and given the penetration of United Kingdom activities by the Turkish security services, it is reasonably likely that they will know that and that she will be at risk on return, either because of her affiliation in the United Kingdom or by reason her family link to the principal appellant.

68. For all of the above reasons, these appeals succeed on refugee grounds and under Article 3 ECHR. The humanitarian protection appeal fails.

DECISION

69. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision.

The appellants' appeals are allowed.

Signed *Judith AJC Gleeson* Date: 31 January 2020

Upper Tribunal Judge Gleeson